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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,436	10/13/2001	Hans Westimijze	ACD2665 US	2901

7590  
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EXAMINER
REDDICK, MARIE L

ART UNIT	PAPER NUMBER
1713	7

DATE MAILED: 12/17/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/889,436

Applicant(s)

WESTIMIJE ET AL

Examiner

Judy M. Reddick

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2001.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application)
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**Priority**

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

**Specification**

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

**Claim Rejections - 35 USC § 112**

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

*The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.*

4. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A) In claim 1, line 1, it is suggested that applicant delete "Emulsion" and insert, in its stead, "An emulsion" so as to engender claim language clarity.

B) In claims 2-10, line 1, it is suggested that applicant delete "Emulsion" and insert "The emulsion" so as to engender claim language clarity.

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- C) *The recited "peroxides" per claim 3 constitutes indefinite subject matter as per it not being readily ascertainable as to how such differentiates over the other recited Markush members.*
- D) *The recited "preferably" per claims 4, 7, 8 and 11 constitutes indefinite subject matter as per it not being readily ascertainable as to if or how said objectionable term further limits the claims.*
- E) *The recited "the peroxide" per claim 6/2/1 and 7/6/2/1 constitutes indefinite subject matter as per the non-express establishment of proper antecedent basis.*
- F) *The recited "viscosity of 10-300 mPa.s." per claim 10 constitutes indefinite subject matter as per the conditions under which such was obtained is not readily ascertainable.*
- G) *The recited "obtainable" per claim 12 constitutes indefinite subject matter as per it not being readily ascertainable as to if or how said objectionable term further limits the claims.*

**Claim Rejections - 35 USC § 101**

5. 35 U.S.C. 101 reads as follows:

*Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.*

*Claim 11 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. "Use of" is not a*

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*statutory category of inventions. Only processes with steps are patentable.*

**Claim Rejections - 35 USC § 103**

6. *The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:*

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

7. *The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:*

1. *Determining the scope and contents of the prior art.*
2. *Ascertaining the differences between the prior art and the claims at issue.*
3. *Resolving the level of ordinary skill in the pertinent art.*
4. *Considering objective evidence present in the application indicating obviousness or nonobviousness.*

8. *Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 492,712 in combination with (International WO 98/18835, Lundin et al(U.S. 4,499,250) or Lundin et al(U.S. 4,547,481)) and Satomi et al(U.S. 4,734,135).*

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**EP'712 discloses an initiating aqueous dispersion, for use in the polymerization of vinyl chloride(alone) or in admixture with up to 90 wt.% of other copolymerizable monomers, which contains 5-75 wt.% of at least one organic peroxide compound, 1-20 wt.% of a dispersing agent which comprises a copolymer of at least one unsaturated dicarboxylic acid and at least one C8-C24 alpha-olefin, esterified with at least one ethoxylated alcohol having a degree of ethoxylation of 1-45 and other conventional additives which include protective colloids such as polyvinyl alcohol, surfactants, anti-settling agents, anti-freeze agents such as C1-C4 alkanols, etc. See, the Abstract, pages 2-6, Runs 14-18 and the Claims of EP'712.**

**The disclosure of EP'712 differs basically from the claimed invention as per the non-express disclosure to use, as the surfactant(s), the specifically defined ethoxylated fatty alcohol, as claimed. However, each of WO'835, Lundin'250 and Lundin'481 teach, basically, the use of aqueous dispersions of peroxide initiating systems, for use in the polymerization of vinyl chloride monomers, containing non-ionic surfactants which include ethoxylated fatty alcohols governed by an HLB value which overlaps in scope with that of the instantly claimed invention and taught as equivalents to the nonionic surfactants disclosed in**

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*Satomi et al*(equivalent to EP 106,627, incorporated by reference at page 4, line 30). Therefore, one having ordinary skill in the art would have found it obvious, on its face, to use, as the invited surfactants of EP'712, the ethoxylated fatty alcohols of WO'835, Lundin et al'250 or Lundin et al'481, based on their disclosed and recognized equivalency to the disclosed surfactants of Satomi et al and with a reasonable expectation of obtaining the cumulative, additive effect, absent a showing of unexpected results, clearly commensurate in scope with the claims.

As to the dependent claims, if not taught, the limitations would have been obvious to the skilled artisan and with a reasonable expectation of success.

#### Conclusion

9. Note the attached FORM PTOL-892 for additional prior art cited as of being illustrative of the general state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judy M. Reddick whose telephone number is (703)308-4346. The examiner can normally be reached on Monday-Friday, 6:30 a.m.-3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703)308-2450. The fax phone numbers for the organization where this application or

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*proceeding is assigned are (703)872-9310 for regular communications  
and (703)892-9311 for After Final communications.*

*Any inquiry of a general nature or relating to the status of this  
application or proceeding should be directed to the receptionist whose  
telephone number is (703)305-8183.*

*J. M. Reddick*  
**Judy M. Reddick**  
**Primary Examiner**  
**Art Unit 1713**

**JMR** *JMR*  
**December 13, 2001**